

CUMULATIVE DIGEST

CH. 11 CONSPIRACY & SOLICITATION

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§11-1

Conspiracy

Smith v. U.S., ___ U.S. ___, ___ S.Ct. ___, ___ L. Ed.2d ___ (2013) (No. 11-8976, 1/9/13)

1. Although the prosecution has the burden to prove beyond a reasonable doubt every fact necessary to constitute the crime with which the defendant is charged, the constitution does not require that the prosecution disprove all affirmative defenses raised by the defense. Instead, the burden of proof may be assigned to the defendant if the affirmative defense in question does not negate an element of the crime. Although the legislative branch may choose to assign the burden of proof concerning other affirmative defenses to the prosecution, the constitution does not require it to do so.

2. Where a defendant was charged with conspiracy and claimed that he had withdrawn from the conspiracy at such time that the statute of limitations expired before the prosecution was brought, the constitution did not require that the prosecution bear the burden of disproving the affirmative defense of withdrawal. A withdrawal defense does not negate an element of conspiracy, but merely determines the point at which the defendant is no longer criminally responsible for acts which his co-conspirators took in furtherance of the conspiracy. Because the defense did not negate any elements of conspiracy, the constitution was not violated because Congress followed the common law rule by assigning to the defendant the burden to prove he had withdrawn from the conspiracy.

The court also noted the “informational asymmetry” between the defense and the prosecution concerning the defense of withdrawal. “The defendant knows what steps, if any, he took to dissociate from his associates,” while it “would be nearly impossible for the Government to prove the negative that an act of withdrawal never happened.”

People v. Ulloa, 2015 IL App (1st) 131632 (No. 1-13-1632, 6/30/15)

To prove the offense of conspiracy to deliver cocaine, the State must prove that defendant himself agreed to the delivery. 720 ILCS 570/405.1. The State cannot prove conspiracy to deliver by showing that defendant was accountable for the actions of another person who agreed to the delivery. The trial court thus committed plain error under both the closely balanced evidence and serious error prongs by instructing the jury that they could find defendant guilty of conspiracy under a theory of accountability.

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§11-2

Solicitation

People v. Boyce, 2015 IL 117108 (No. 117108, 2/20/15)

1. The offense of solicitation of murder occurs where, with the intent that first degree murder be committed, a person commands, encourages, or requests another to commit that offense. (720 ILCS 5/8-1.1) The Supreme Court found that the General Assembly did not intend that uncommunicated requests constitute solicitation of murder. Thus, where a solicitation is made by letter, the intended recipient must actually receive the letter in order for the crime of solicitation of murder to occur.

In the course of its holding, the court noted that the General Assembly based the solicitation statute on the Model Penal Code but declined to enact the provision of the Code which included uncommunicated solicitations within the definition of the offense.

2. An attempt occurs where, with intent to commit a specific offense, a person performs any act that constitutes a substantial step toward the commission of the specific offense. (720 ILCS 5/8-4(a)) The general attempt provision applies to all offenses unless the legislature intended that a more specific crime include attempt or application of the attempt statute to a principal offense would create an inherent impossibility. Legislative intent that a more specific crime includes attempt is shown by the inclusion of explicit “attempt” language in the definition of the specific offense.

The court concluded that the attempt statute applies to the offense of solicitation in Illinois. Thus, a person who sends a mailed solicitation which does not reach the intended recipient may be convicted of attempt solicitation.

Defendant’s conviction for attempted solicitation of murder was affirmed.

(Defendant was represented by Assistant Defender Philip Payne, Chicago.)

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